

AMENDED IN SENATE JULY 12, 2011

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN ASSEMBLY MAY 23, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 771**

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**Introduced by Assembly Member Butler**

February 17, 2011

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An act to amend Section 1368 of, and to add Section 1368.2 to, the Civil Code, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

AB 771, as amended, Butler. Common interest developments: requests for documents: fees.

The Davis-Stirling Common Interest Development Act requires an owner of a separate interest in a common interest development to provide specified documents to a prospective purchaser of that interest. Existing law requires a homeowners' association to provide these documents to the owner of the separate interest within 10 days of the mailing or delivery of the request, and limits the amount of fees charged for the provision of the documents to the association's actual costs to procure, prepare, and reproduce the requested documents.

This bill would require that the seller also provide a copy of specified minutes of the meetings of the association's board of directors, if

requested by the prospective purchaser. This bill would also require an association to provide to the seller a written or electronic estimate of the fees that will be assessed to provide the specified documents. The bill would permit the association to collect a reasonable fee based on the association's actual cost for procuring, preparing, reproducing, and delivering the requested documents and would prohibit charging additional fees for electronic delivery of documents. The bill would permit the association to contract with any person or entity to provide the documents on behalf of the association. The bill would require the owner of a separate interest to also provide a form for billing disclosures, as specified, to a prospective purchaser, and would also require the association to provide this form to a recipient authorized by the owner of the separate interest.

This bill would incorporate additional changes to Section 1368 of the Civil Code proposed by SB 150 that would become operative only if both this bill and SB 150 are chaptered and become effective on or before January 1, 2012, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1368 of the Civil Code is amended to  
2     read:  
3     1368. (a) The owner of a separate interest, other than an owner  
4     subject to the requirements of Section 11018.6 of the Business and  
5     Professions Code, shall, as soon as practicable before transfer of  
6     title to the separate interest or execution of a real property sales  
7     contract therefor, as defined in Section 2985, provide the following  
8     to the prospective purchaser:  
9     (1) A copy of the governing documents of the common interest  
10    development, including any operating rules, and including a copy  
11    of the association's articles of incorporation, or, if not incorporated,  
12    a statement in writing from an authorized representative of the  
13    association that the association is not incorporated.  
14    (2) If there is a restriction in the governing documents limiting  
15    the occupancy, residency, or use of a separate interest on the basis  
16    of age in a manner different from that provided in Section 51.3, a  
17    statement that the restriction is only enforceable to the extent

1 permitted by Section 51.3 and a statement specifying the applicable  
2 provisions of Section 51.3.

3 (3) A copy of the most recent documents distributed pursuant  
4 to Section 1365.

5 (4) A true statement in writing obtained from an authorized  
6 representative of the association as to the amount of the  
7 association's current regular and special assessments and fees, any  
8 assessments levied upon the owner's interest in the common  
9 interest development that are unpaid on the date of the statement,  
10 and any monetary fines or penalties levied upon the owner's  
11 interest and unpaid on the date of the statement. The statement  
12 obtained from an authorized representative shall also include true  
13 information on late charges, interest, and costs of collection which,  
14 as of the date of the statement, are or may be made a lien upon the  
15 owner's interest in a common interest development pursuant to  
16 Section 1367 or 1367.1.

17 (5) A copy or a summary of any notice previously sent to the  
18 owner pursuant to subdivision (h) of Section 1363 that sets forth  
19 any alleged violation of the governing documents that remains  
20 unresolved at the time of the request. The notice shall not be  
21 deemed a waiver of the association's right to enforce the governing  
22 documents against the owner or the prospective purchaser of the  
23 separate interest with respect to any violation. This paragraph shall  
24 not be construed to require an association to inspect an owner's  
25 separate interest.

26 (6) A copy of the preliminary list of defects provided to each  
27 member of the association pursuant to Section 1375, unless the  
28 association and the builder subsequently enter into a settlement  
29 agreement or otherwise resolve the matter and the association  
30 complies with Section 1375.1. Disclosure of the preliminary list  
31 of defects pursuant to this paragraph does not waive any privilege  
32 attached to the document. The preliminary list of defects shall also  
33 include a statement that a final determination as to whether the list  
34 of defects is accurate and complete has not been made.

35 (7) A copy of the latest information provided for in Section  
36 1375.1.

37 (8) Any change in the association's current regular and special  
38 assessments and fees which have been approved by the  
39 association's board of directors, but have not become due and

1 payable as of the date disclosure is provided pursuant to this  
2 subdivision.

3 (9) If requested by the prospective purchaser, a copy of the  
4 minutes of the ~~regular meetings~~ *meetings, excluding meetings held*  
5 *in executive session*, of the association's board of directors,  
6 conducted over the previous 12 months, that were approved by  
7 the association's board of directors.

8 (b) (1) Upon written request, the association shall, within 10  
9 days of the mailing or delivery of the request, provide the owner  
10 of a separate interest, or any other recipient authorized by the  
11 owner, with a copy of the requested documents specified in  
12 paragraphs (1) to (9), inclusive, of subdivision (a). Upon receipt  
13 of a written request, the association shall provide, *on the form*  
14 *described in Section 1368.2*, a written or electronic estimate of the  
15 fees that will be assessed for providing the requested documents.  
16 The documents required to be made available pursuant to this  
17 section may be maintained in electronic form, and may be posted  
18 on the association's Internet Web site. Requesting parties shall  
19 have the option of receiving the documents by electronic  
20 transmission if the association maintains the documents in  
21 electronic form. The association may collect a reasonable fee based  
22 upon the association's actual cost for the procurement, preparation,  
23 reproduction, and delivery of the documents requested pursuant  
24 to the provisions of this section.

25 (2) No additional fees may be charged by the association for  
26 the electronic delivery of the documents requested.

27 (3) Fees for any documents required by this section shall be  
28 distinguished from other fees, fines, or assessments billed as part  
29 of the transfer or sales transaction. Delivery of the documents  
30 required by this section shall not be withheld for any reason nor  
31 subject to any condition except the payment of the fee allowed  
32 pursuant to paragraph (1).

33 (4) An association may contract with any person or entity to  
34 facilitate compliance with the requirements of this subdivision on  
35 behalf of the association.

36 (5) The association shall also provide a recipient authorized by  
37 the owner of a separate interest with a copy of the completed form  
38 specified in Section 1368.2 at the time the required documents are  
39 delivered.

1 (c) (1) Except as provided in paragraph (2), neither an  
2 association nor a community service organization or similar entity  
3 may impose or collect any assessment, penalty, or fee in connection  
4 with a transfer of title or any other interest except for the following:

5 (A) An amount not to exceed the association's actual costs to  
6 change its records.

7 (B) An amount authorized by subdivision (b).

8 (2) The prohibition in paragraph (1) does not apply to a  
9 community service organization or similar entity, or to a nonprofit  
10 entity that provides services to a common interest development  
11 under a declaration of trust, that is described in subparagraph (A)  
12 or (B):

13 (A) The community service organization or similar entity  
14 satisfies both of the following requirements:

15 (i) The community service organization or similar entity was  
16 established prior to February 20, 2003.

17 (ii) The community service organization or similar entity exists  
18 and operates, in whole or in part, to fund or perform environmental  
19 mitigation or to restore or maintain wetlands or native habitat, as  
20 required by the state or local government as an express written  
21 condition of development.

22 (B) The community service organization or similar entity, or a  
23 nonprofit entity that provides services to a common interest  
24 development under a declaration of trust, satisfies all of the  
25 following requirements:

26 (i) The organization or entity is not an organization or entity  
27 described in subparagraph (A).

28 (ii) The organization or entity was established and received a  
29 transfer fee prior to January 1, 2004.

30 (iii) On and after January 1, 2006, the organization or entity  
31 offers a purchaser the following payment options for the fee or  
32 charge it collects at time of transfer:

33 (I) Paying the fee or charge at the time of transfer.

34 (II) Paying the fee or charge pursuant to an installment payment  
35 plan for a period of not less than seven years. If the purchaser  
36 elects to pay the fee or charge in installment payments, the  
37 organization or entity may also collect additional amounts that do  
38 not exceed the actual costs for billing and financing on the amount  
39 owed. If the purchaser sells the separate interest before the end of

1 the installment payment plan period, he or she shall pay the  
2 remaining balance prior to transfer.

3 (3) For the purposes of this subdivision, a “community service  
4 organization or similar entity” means a nonprofit entity, other than  
5 an association, that is organized to provide services to residents  
6 of the common interest development or to the public in addition  
7 to the residents, to the extent community common areas or facilities  
8 are available to the public. A “community service organization or  
9 similar entity” does not include an entity that has been organized  
10 solely to raise moneys and contribute to other nonprofit  
11 organizations that are qualified as tax exempt under Section  
12 501(c)(3) of the Internal Revenue Code and that provide housing  
13 or housing assistance.

14 (d) Any person or entity who willfully violates this section is  
15 liable to the purchaser of a separate interest that is subject to this  
16 section for actual damages occasioned thereby and, in addition,  
17 shall pay a civil penalty in an amount not to exceed five hundred  
18 dollars (\$500). In an action to enforce this liability, the prevailing  
19 party shall be awarded reasonable attorneys’ fees.

20 (e) Nothing in this section affects the validity of title to real  
21 property transferred in violation of this section.

22 (f) In addition to the requirements of this section, an owner  
23 transferring title to a separate interest shall comply with applicable  
24 requirements of Sections 1133 and 1134.

25 (g) For the purposes of this section, a person who acts as a  
26 community association manager is an agent, as defined in Section  
27 2297, of the association.

28 SEC. 1.5. Section 1368 of the Civil Code is amended to read:

29 1368. (a) The owner of a separate interest, other than an owner  
30 subject to the requirements of Section 11018.6 of the Business and  
31 Professions Code, shall, as soon as practicable before transfer of  
32 title to the separate interest or execution of a real property sales  
33 contract therefor, as defined in Section 2985, provide the following  
34 to the prospective purchaser:

35 (1) A copy of the governing documents of the common interest  
36 development, including any operating rules, and including a copy  
37 of the association’s articles of incorporation, or, if not incorporated,  
38 a statement in writing from an authorized representative of the  
39 association that the association is not incorporated.

1 (2) If there is a restriction in the governing documents limiting  
2 the occupancy, residency, or use of a separate interest on the basis  
3 of age in a manner different from that provided in Section 51.3, a  
4 statement that the restriction is only enforceable to the extent  
5 permitted by Section 51.3 and a statement specifying the applicable  
6 provisions of Section 51.3.

7 (3) A copy of the most recent documents distributed pursuant  
8 to Section 1365.

9 (4) A true statement in writing obtained from an authorized  
10 representative of the association as to the amount of the  
11 association's current regular and special assessments and fees, any  
12 assessments levied upon the owner's interest in the common  
13 interest development that are unpaid on the date of the statement,  
14 and any monetary fines or penalties levied upon the owner's  
15 interest and unpaid on the date of the statement. The statement  
16 obtained from an authorized representative shall also include true  
17 information on late charges, interest, and costs of collection which,  
18 as of the date of the statement, are or may be made a lien upon the  
19 owner's interest in a common interest development pursuant to  
20 Section 1367 or 1367.1.

21 (5) A copy or a summary of any notice previously sent to the  
22 owner pursuant to subdivision (h) of Section 1363 that sets forth  
23 any alleged violation of the governing documents that remains  
24 unresolved at the time of the request. The notice shall not be  
25 deemed a waiver of the association's right to enforce the governing  
26 documents against the owner or the prospective purchaser of the  
27 separate interest with respect to any violation. This paragraph shall  
28 not be construed to require an association to inspect an owner's  
29 separate interest.

30 (6) A copy of the initial list of defects provided to each member  
31 of the association pursuant to Section 1375, unless the association  
32 and the builder subsequently enter into a settlement agreement or  
33 otherwise resolve the matter and the association complies with  
34 Section 1375.1. Disclosure of the initial list of defects pursuant to  
35 this paragraph does not waive any privilege attached to the  
36 document. The initial list of defects shall also include a statement  
37 that a final determination as to whether the list of defects is accurate  
38 and complete has not been made.

39 (7) A copy of the latest information provided for in Section  
40 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(9) If there is a provision in the governing documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant, a statement describing the prohibition and its applicability.

(10) If requested by the prospective purchaser, a copy of the minutes of the ~~regular meetings~~ *meetings, excluding meetings held in executive session*, of the association's board of directors, conducted over the previous 12 months, that were approved by the association's board of directors.

(b) (1) Upon written request, the association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest, or any other recipient authorized by the owner, with a copy of the requested documents specified in paragraphs (1) to (10), inclusive, of subdivision (a). Upon receipt of a written request, the association shall provide, *on the form described in Section 1368.2*, a written or electronic estimate of the fees that will be assessed for providing the requested documents. The documents required to be made available pursuant to this section may be maintained in electronic form, and may be posted on the association's Internet Web site. Requesting parties shall have the option of receiving the documents by electronic transmission if the association maintains the documents in electronic form. The association may collect a reasonable fee based upon the association's actual cost for the procurement, preparation, reproduction, and delivery of the documents requested pursuant to the provisions of this section.

(2) No additional fees may be charged by the association for the electronic delivery of the documents requested.

(3) Fees for any documents required by this section shall be distinguished from other fees, fines, or assessments billed as part of the transfer or sales transaction. Delivery of the documents required by this section shall not be withheld for any reason nor subject to any condition except the payment of the fee allowed pursuant to paragraph (1).



1 (4) An association may contract with any person or entity to  
2 facilitate compliance with the requirements of this subdivision on  
3 behalf of the association.

4 (5) The association shall also provide a recipient authorized by  
5 the owner of a separate interest with a copy of the completed form  
6 specified in Section 1368.2 at the time the required documents are  
7 delivered.

8 (c) (1) Except as provided in paragraph (2), neither an  
9 association nor a community service organization or similar entity  
10 may impose or collect any assessment, penalty, or fee in connection  
11 with a transfer of title or any other interest except for the following:

12 (A) An amount not to exceed the association's actual costs to  
13 change its records.

14 (B) An amount authorized by subdivision (b).

15 (2) The prohibition in paragraph (1) does not apply to a  
16 community service organization or similar entity, or to a nonprofit  
17 entity that provides services to a common interest development  
18 under a declaration of trust, that is described in subparagraph (A)  
19 or (B):

20 (A) The community service organization or similar entity  
21 satisfies both of the following requirements:

22 (i) The community service organization or similar entity was  
23 established prior to February 20, 2003.

24 (ii) The community service organization or similar entity exists  
25 and operates, in whole or in part, to fund or perform environmental  
26 mitigation or to restore or maintain wetlands or native habitat, as  
27 required by the state or local government as an express written  
28 condition of development.

29 (B) The community service organization or similar entity, or a  
30 nonprofit entity that provides services to a common interest  
31 development under a declaration of trust, satisfies all of the  
32 following requirements:

33 (i) The organization or entity is not an organization or entity  
34 described in subparagraph (A).

35 (ii) The organization or entity was established and received a  
36 transfer fee prior to January 1, 2004.

37 (iii) On and after January 1, 2006, the organization or entity  
38 offers a purchaser the following payment options for the fee or  
39 charge it collects at time of transfer:

40 (I) Paying the fee or charge at the time of transfer.

(II) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the organization or entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, he or she shall pay the remaining balance prior to transfer.

(3) For the purposes of this subdivision, a “community service organization or similar entity” means a nonprofit entity, other than an association, that is organized to provide services to residents of the common interest development or to the public in addition to the residents, to the extent community common areas or facilities are available to the public. A “community service organization or similar entity” does not include an entity that has been organized solely to raise moneys and contribute to other nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code and that provide housing or housing assistance.

(d) Any person or entity who willfully violates this section is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys’ fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

(g) For the purposes of this section, a person who acts as a community association manager is an agent, as defined in Section 2297, of the association.

SEC. 2. Section 1368.2 is added to the Civil Code, to read:

1368.2. The form for billing disclosures required by Section 1368 shall be in substantially the following form:

CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION  
1368\*

Property Address \_\_\_\_\_  
 Owner of Property \_\_\_\_\_  
 Owner's Mailing Address \_\_\_\_\_  
 (If known or different from property address.)

Provider of the Section 1368 Items:

Print Name Position or Title Association or Agent Date Form Completed

Check or Complete Applicable Column or Columns Below

Document	Civil Code Section	Included	Not Available (N/A) or Not Applicable (N/App)
Articles of Incorporation or statement that not incorporated	Section 1368(a)(1)	_____	_____
CC&Rs	Section 1368(a)(1)	_____	_____
Bylaws	Section 1368(a)(1)	_____	_____
Operating Rules	Section 1368(a)(1)	_____	_____
Age restrictions, if any	Section 1368(a)(2)	_____	_____
Pro forma operating budget or summary, including reserve study	Sections 1365 and 1368(a)(3)	_____	_____
Assessment and reserve funding disclosure summary	Sections 1365 and 1368(a)(4)	_____	_____
Financial statement review	Sections 1365 and 1368(a)(3)	_____	_____
Assessment enforcement policy	Sections 1365 and 1368(a)(4)	_____	_____
Insurance summary	Sections 1365 and 1368(a)(3)	_____	_____
Regular assessment	Section 1368(a)(4)	_____	_____
Special assessment	Section 1368(a)(4)	_____	_____
Emergency assessment	Section 1368(a)(4)	_____	_____
Other unpaid obligations of seller	Sections 1367.1 and 1368(a)(4)	_____	_____

1	Approved changes to	<del>Section</del> Sections	_____	_____
2	assessments	1365 and		
3		1368(a)(4), (8)		
4	Settlement notice regarding	Sections	_____	_____
5	common area defects	1368(a)(6), (7) and		
6		1375.1		
7	Preliminary list of defects	Sections	_____	_____
8		1368(a)(6), 1375,		
9		and 1375.1		
10	Notice(s) of violation	Sections 1363 and	_____	_____
11		1368(a)(5)		
12				
13				
14	Required statement of fees	Section 1368	_____	_____
15	Minutes of regular meetings	Section 1368(a)(9)	_____	_____
16	of the board of directors			
17	conducted over the previous			
18	12 months, if requested			
19	Total fees for these		_____	
20	documents:			

21 \* The information provided by this form may not include all fees that may be  
 22 imposed before the close of escrow. Additional fees that are not related to the  
 23 requirements of Section 1368 may be charged separately.

24  
 25 SEC. 3. Section 1.5 of this bill incorporates amendments to  
 26 Section 1368 of the Civil Code proposed by both this bill and SB  
 27 150. It shall only become operative if (1) both bills are enacted  
 28 and become effective on or before January 1, 2012, (2) each bill  
 29 amends Section 1368 of the Civil Code, and (3) this bill is enacted  
 30 after SB 150, in which case Section 1 of this bill shall not become  
 31 operative.